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## Complaint Filed



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**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO DISTRICT

MAY 20 2015

SCANNED

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 similarly situated and aggrieved employees.

\$435.00

150520-0907

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## FOR THE COUNTY OF SAN BERNARDINO - CIVIL DIVISION DISTRICT

LOURDES LEFEVRE, an individual, on behalf  
 of herself and all similarly situated and aggrieved  
 employees.

Case No. CIVDS1507069

Plaintiffs,

CLASS ACTION COMPLAINT FOR  
DAMAGES:

vs.

FIVE STAR QUALITY CARE, INC., a  
 Maryland Corporation; DOES 1 through 25,  
 inclusive,

Defendants.

- 1) VIOLATION OF CALIFORNIA  
LABOR CODE §§510, 1198--  
UNPAID OVERTIME WAGES;
- 2) VIOLATIONS OF CALIFORNIA  
LABOR CODE §226.7 AND  
512(a)--MEAL PERIOD  
VIOLATIONS;
- 3) VIOLATIONS OF CALIFORNIA  
LABOR CODE §226.7--REST  
BREAK VIOLATIONS;
- 4) FAILURE TO PROVIDE WAGE  
STATEMENTS IN VIOLATION  
OF CALIFORNIA LABOR CODE  
§226;
- 5) FAILURE TIMELY TO PAY  
WAGES IN VIOLATION OF  
CALIFORNIA LABOR CODE §204;
- 6) FAILURE TO KEEP ACCURATE  
PAYROLL RECORDS;
- 7) FAILURE TO REIMBURSE FOR  
REASONABLE BUSINESS  
EXPENSES;
- 8) UNFAIR BUSINESS PRACTICES;
- 9) FAILURE TO COMPLY WITH  
PRIVATE ATTORNEYS  
GENERAL ACT (PAGA);

DEMAND FOR JURY TRIAL

COMES NOW, PLAINTIFF, LOURDES LEFEVRE, on her behalf ("Plaintiff"), and on behalf of all others similarly situated ("Plaintiff Class"), and as authorized under the California Private Attorney General's Act, and through her attorneys of record, and for causes of action against Defendants, alleges as follows:

### INTRODUCTION

1. This class action and enforcement action is brought pursuant to California Code of Civil Procedure section 382 and the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. ("PAGA") to recover damages, wages, penalties, and all other available relief on behalf of Plaintiff, the State of California, and all other persons who are or were employed by Defendant FIVE STAR QUALITY CARE, INC. in the state of California, and who suffered one or more of the Labor Code violations set forth in this complaint..

2. Plaintiff LOURDES LEFEVRE (hereinafter "Plaintiff"), is, and at all relevant times was, an individual who resides in the State of California in the County of San Bernardino.

3. Plaintiff is informed and believes that defendant FIVE STAR QUALITY CARE, INC. is and at all relevant times mentioned herein was a senior living provider operating a number of locations in the state of California, including locations in San Bernardino County. Plaintiff is informed and believes that Defendant is a Maryland corporation, with its principal place of business in Massachusetts.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 25, inclusive, are currently unknown to Plaintiff who therefore sues Defendants such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereafter as Does when such entities become known. Defendant FIVE STAR QUALITY CARE, INC. and Does 1 through 25 are collectively referred to as "Defendant."

5. Plaintiff was initially hired by Defendant in or about January 15, 2013. Plaintiff was employed by Defendant within Defendant's "Business Unit" known as "Somerford Redlands"

1 located in Redlands, California. Plaintiff performed "personal care" work at the Redlands location.  
 2 Plaintiff's paycheck stubs identify her employer as "Five Star Quality Care, Inc."

3 6. Plaintiff has brought this action, pursuant to Code of Civil Procedure §382, on  
 4 behalf of a Plaintiff Class of employees currently and formerly employed by Defendant in the state  
 5 of California. For at least three (3) years prior to filing of this action and through the present,  
 6 Plaintiff is informed and believes that Defendant has violated the California Labor Code and  
 7 applicable California Wage Orders in the manners alleged herein. For at least (4) years prior to the  
 8 filing of this action and through the present, Plaintiff is informed and believes that Defendant has  
 9 violated California Business & Professions Code §17200 in the manners alleged herein.

10 7. Plaintiff served February 17, 2015 correspondence on Defendant and on the  
 11 California Labor and Workforce Development Agency ("LWDA") providing notice of her intent to  
 12 bring a private attorneys general action for recovery of penalties under the California Labor Code  
 13 Private Attorneys General Act of 2004, California Labor Code §2698, et seq. ("PAGA"). See *Arias*  
 14 *v. Superior Court*, 46 Cal. 4th 969 (2009). Plaintiff has exhausted her administrative prerequisites to  
 15 filing a PAGA action. PAGA permits an "aggrieved employee" to bring a lawsuit for civil penalties  
 16 for California Labor Code violations committed against himself or herself and other current and  
 17 former employees, to address an employer's violations of the California Labor Code. With the  
 18 conclusion of the PAGA exhaustion period, Plaintiff seeks penalties as a private attorney general for  
 19 the California Labor Code violations committed against her and Defendants' other current and other  
 20 former California employees.

21 8. This is also a class action arising from Defendants' systematic violations of the  
 22 California Labor Code pertaining to Defendant's: (i) failure to pay overtime wages; (ii) failure to  
 23 authorize and permit rest periods; (iii) failure to pay timely wages both during employment and upon  
 24 separation from employment; (iv) failure to issue compliant itemized wage statements; (v) failure to  
 25 provide lawful meal breaks; (vi) failure to provide accrued vacation; (vii) failure to pay all wages due  
 26 upon separation from employment with Defendant and (viii) claims for unfair competition.

27 9. Plaintiff, on her behalf and on behalf of all Class Members, brings this action  
 28 pursuant to Labor Code §201, 202, 203, 226.7, 512, 2699, 2802, and California IWC Wage Order

No. 4-2001, seeking unpaid overtime wages, unpaid rest break and meal period compensation, penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

10. Plaintiff, on her behalf and on behalf of a class, pursuant to Business & Professions Code § 17200 *et seq.*, also seeks injunctive relief, restitution, and disgorgement of all wages, and money owed to Plaintiffs by Defendant from: (1) failure to pay proper wages, and overtime wages; and (2) failure to compensate for rest and meal periods due. In addition, waiting time penalties and enforcement of civil penalties are sought pursuant to Business and Professions Code §17200 *et seq.*, Labor Code §203, and Labor Code §2698 *et seq.*

### **FACTUAL BACKGROUND**

11. Plaintiff alleges that the employment relationship that gave rise to the allegations set forth herein was entered into in California, and that the subject of said employment relationship arose in the County of San Bernardino and is subject to all applicable wage and hour laws in furtherance of the public policies of the state of California.

12. Plaintiff commenced her employment with Defendant in and around January, 2013. Plaintiff is informed and believes that Defendant's unlawful pay, wage and hour practices applicable to Plaintiff, have also been applied by Defendant to other employees who are current and/or former employees of Defendant working in locations throughout the state of California.

13. Plaintiff is informed and believes that Defendant has implemented standardized employment policies in California which are contrary to California law and which have resulted in Plaintiff and similarly situated employees being deprived of wages and break periods as required by California law. For instance, Plaintiff is informed and believes that Defendant specifies in its employee manual that rest breaks are a "company benefit" when, to the contrary, rest breaks are mandated and required by state law. Plaintiff is also informed and believes that Defendant fails to comply with state law and does not provide proportional fractional break times based on the total number of hours of a shift worked thereby depriving Plaintiff and other similarly situated employees with sufficient required breaks.

14. Plaintiff is also informed and believes that she and other similarly situated employees have been required to work overtime hours in excess of 8 hours per day and/or 40 hours per week,

1 as well as overtime holiday hours, without receiving all overtime and other wages at wage rates due  
2 and owing for such overtime and/or overtime holiday hours worked. For instance, Plaintiff was  
3 paid overtime at the rate of \$5.00 per hour. Plaintiff was also not paid overtime for "7-days" in  
4 which she worked consecutive/excess holiday hours. Plaintiff is informed and believes that  
5 Defendant's payroll practices shorted and/or miscalculated and misreported overtime wage rates  
6 and hours worked by Plaintiff and other similarly situated employees resulting in significant loss of  
7 money and property and resulting wage damages.

8 15. Plaintiff is also informed and believes that Defendant improperly charges and/or  
9 deducts amounts from Plaintiff's and other similarly situated employees' paychecks for shoes and  
10 other employer-related uniforms and/or equipment for which the employer is obligated to pay  
11 under California law. For instance, Plaintiff's pay stub for the pay period ending November, 30,  
12 2013, included a deduction of \$5.00 for "Shoe."

13 16. Plaintiff is also informed and believes that Defendant routinely failed to provide  
14 Plaintiff and other similarly situated employees with meal breaks that complied with California law  
15 and required Plaintiff and others to continue to work and stay at their work stations, known at  
16 "cottages" even during meal and rest break periods. Due to the lack of coverage and the lack of  
17 persons who could float or cover at work stations, particularly when it came to "NOC" shifts,  
18 Plaintiff was required to stay at her work station to cover patients/residents even when she was  
19 "clocked out." Plaintiff is informed and believes that Defendant regularly and systematically  
20 followed the practice of instructing Plaintiff and other employees to "clock out" but to stay at their  
21 cottages to cover during meal and rest breaks.

22 17. Plaintiff is also informed and believes that Defendant routinely failed to provide  
23 paper copies of itemized paycheck stubs to its employees and that employees were required to incur  
24 a loss of money and property to have their own paycheck stubs printed. For instance, Plaintiff was  
25 never provided with a paper copy of her paycheck stub by her employer and in order to obtain a  
26 copy of her paycheck stub, she was required to print them out herself.

27 18. Plaintiff is informed and believes that based on the large number of locations and  
28 the significant number of employees and shifts managed by Defendant in the state of California, that

the improper and/or illegal wage and hour practices alleged herein, adversely impacted and harmed a class of more than 250 past and current employees of Defendant.

### CLASS ALLEGATIONS

19. In addition to her PAGA claims alleged herein, Plaintiff seeks monetary damages, restitution and civil penalties on behalf of specific classes of similarly situated persons employed by Defendant in California. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure §382. The following Classes that Plaintiff seeks to represent is composed of and defined as follows:

- a. A class of Plaintiff and similarly situated hourly employees employed by Defendant in California who were non-exempt and not paid at the proper hourly rate and for all overtime hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and/or for all holiday hours worked, during the class period ("OT Class");
- b. Classes of Plaintiff and similarly situated employees employed by Defendant in California who were not provided required and proper meal breaks and required and proper rest breaks ("Meal break Class", "Rest break Class");
- c. A class of Plaintiff and similarly situated employees employed by Defendant in California who were forced to incur deductions of expenses on behalf of their employer in the performance of their duties as required by Defendant and without being reimbursed as required under California Labor Code section 2802 ("Deduction/unreimbursed Class");

20. The Class period is designated as the time from May, 2011, through the trial date, or as long as will be permitted by law and/or statute, based upon information and belief that the violations of the California Labor Code and/or California Business & Professions Code, as described in this complaint, have been long standing and are continuing to this date. Plaintiff herein reserves the right to amend this Complaint for damages and restitution to reflect a different Class Period as discovery in this matter proceeds.

21. This lawsuit includes claims brought as a class action on behalf of each Plaintiff Class



1 identified in Paragraph 19 which is made up of persons who are and/or have been employed by  
 2 Defendant and who were not paid proper wages and/or lost money and/or property in violation of  
 3 California law. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or  
 4 necessary to amend the definition of the Classes and/or to provide for Subclasses. In any event,  
 5 Plaintiff will formally define and designate a class definition at such time when Plaintiff seek to  
 6 certify the Class(es) and/or Subclasses.

7 22. On behalf of herself and similarly situated employees, Plaintiff alleges that  
 8 Defendant has engaged in a pattern and practice of violating the rights of employees and its duties as  
 9 an employer in contravention of the laws and regulations of the state of California.

10 23. Plaintiff is informed and believes, and on that basis alleges, that during the class  
 11 period, a significant number of individuals located throughout California have been employed by  
 12 Defendant in the "aide" position and/or as employees within the collective and similarly situated  
 13 classes identified in this complaint. Because members of each of the proposed classes are so  
 14 numerous and/or easier to identify and locate through the classes of employees found in the  
 15 centralized records and data of Defendant, joinder of all members is impossible and/or  
 16 impracticable. Moreover, Defendant operates locations throughout the state of California which  
 17 further renders joinder to be impracticable and the class action to be a superior device for  
 18 determination of the rights and obligations of the parties.

19 24. This action may properly be maintained as a class action because there is a  
 20 well-defined community of interest in the litigation and the proposed class is easily ascertainable:

21 a. Numerosity: The potential members of the Classes as defined are so  
 22 numerous that joinder of all the members of the Classes is impracticable. While the  
 23 precise number of Class Members has not been determined at this time, Plaintiff is  
 24 informed and believes that each of the classes of current and former Five Star  
 25 Quality employees employed in California exceeds at least 250 people.

26 b. Commonality: There are questions of law and fact common to the Plaintiff  
 27 and to each of the Classes that predominate over any questions affecting only  
 28 Plaintiff or individual members of the Classes.



1 c. Typicality: Plaintiff's claims are typical of the claims of the Classes. Plaintiff  
2 and all members of the Classes sustained loss of money, property and/or wages  
3 applicable to each class arising out of and caused by Defendant's common course of  
4 conduct in violation of law as alleged herein.

5 d. Adequacy Of Representation: As the proposed class representative, Plaintiff  
6 has standing and a common interest with other members of the proposed classes and  
7 will fairly and adequately represent and protect the interests of the Class Members.  
8 Counsel who represents the Plaintiff is competent and experienced in litigating large  
9 wage-and-hour and other class actions.

10 e. Superiority Of Class Action: A class action is superior to other available  
11 means for the fair and efficient adjudication of this controversy. Individual joinder of  
12 all Class Members is not practicable, and questions of law and fact common to the  
13 Class predominate over any questions affecting only individual members of the  
14 Classes. Each Class Member has been damaged and is entitled to recovery by reason  
15 of Defendant's illegal policies and practices. Even if every individual Class Member  
16 could afford individual litigation, the court system could not. It would be unduly  
17 burdensome to the court in which the individual litigation of the numerous cases  
18 would proceed. Individualized litigation would magnify the delay and expense to all  
19 parties and to the court system resulting from multiple trials of the same complex  
20 factual issues. In addition, if each individual Class Member was required to file an  
21 individual lawsuit, the large corporate Defendants would necessarily gain an  
22 unconscionable advantage because Defendant would be able to exploit and  
23 overwhelm the limited resources of each individual Class Member with Defendant  
24 vastly superior financial and legal resources. By contrast, the conduct of this action as  
25 a class action presents few management difficulties, conserves the resources of the  
26 parties and of the court system, and protects the rights of each Class Member.  
27 Plaintiff anticipates no difficulty in the management of this action as a class action  
28 since the unlawful conduct at issue is the same with respect to all Class Members.

25. The prosecution of separate actions by individual Class Members may create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class Members not parties to such adjudication or that would substantially impair or impede the ability of such non-party Class Members to protect their interests.

26. The prosecution of individual actions by Class Members could establish inconsistent standards of conduct for Five Star Quality Care.

27. Defendant has acted, or refused to act, in respects generally applicable to the Classes as a whole, thereby making appropriate final and injunctive relief or corresponding declaratory relief with regard to members of the class as a whole, as requested herein. Likewise, Defendant's conduct as described above is unlawful, continuing, and capable of repetition and will continue unless restrained and enjoined by the Court.

28. The names and addresses of the Plaintiff Classes are available from the business records of Defendant. Notice will be provided to the Plaintiff Classes via first class mail and/or by the use of techniques and a form of notice similar to those customarily used in class actions.

29. Notice to the members of the Plaintiff Classes may be made by first-class mail addressed to all persons who have been individually identified by Defendant through access to Defendant's business records. Alternatively, if Defendant cannot produce a list of Plaintiff Classes' members' names and addresses, the members of the Plaintiff Classes may be notified by publication in the appropriate newspapers, and by posting notices in Defendant's places of business in the State of California.

### **FIRST CAUSE OF ACTION**

#### **(VIOLATION OF CALIFORNIA LABOR CODE §§510, 1198--UNPAID OVERTIME WAGES)**

#### **(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

30. Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out above in paragraphs 1 through 29.

31. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section

1 1198 requires that "... the standard conditions of labor fixed by the commission shall be the...  
 2 standard conditions of labor for employees. The employment of any employee... under conditions of  
 3 labor prohibited by the order is unlawful."

4 32. Labor Code § 510 and Wage Order 4, § 3(A) require employers to pay employees  
 5 one-and-one-half (1-1/2) times the regular hour rate for all those hours worked in excess of eight (8)  
 6 in one workday and in excess of forty (40) hours in one workweek and for the first eight hours  
 7 worked on the seventh day of work in any one workweek. Labor Code § 510 and Wage Order 4, §  
 8 3(A) further require employers to pay employees two (2) times the regular rate of pay for hours  
 9 worked in excess of twelve (12) hours per day and, on the seventh consecutive workday, any work in  
 10 excess of eight (8) hours.

11 33. Labor Code § 1194 entitles an employee receiving less than the legal overtime  
 12 compensation to recover in a civil action the unpaid balance of the full amount of this minimum  
 13 wage, including interest thereon, reasonable attorney's fees, and costs of suit.

14 34. At all relevant times, Defendants have failed to pay overtime compensation to  
 15 Plaintiff and the OT Class as alleged above in violation of Labor Code § 510 and Wage Order 4,  
 16 §3(A).

17 35. As a result of Defendants' conduct, Plaintiff and the OT Class have been and  
 18 continue to be deprived of overtime compensation in an amount to be determined at trial, and are  
 19 entitled to recovery of such amounts, including interest thereon, reasonable attorney's fees, and costs  
 20 of suit pursuant to Labor Code § 1194.

## 21 SECOND CAUSE OF ACTION

### 22 (VIOLATIONS OF CALIFORNIA LABOR CODE §226.7 AND 512(a)–MEAL PERIOD

#### 23 VIOLATIONS)

#### 24 (DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)

25 36. Plaintiff incorporates by reference and re-alleges as if fully stated herein the  
 26 allegations set out above in paragraphs 1 through 35.

27 37. At all relevant times herein set forth, the applicable IWC Wage Order(s) and  
 28 California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the Meal Period

1 Class's employment by Defendant.

2 38. At all relevant times herein set forth, California Labor Code section 226.7 provides  
3 that no employer shall require an employee to work during any meal period mandated by an  
4 applicable order of the IWC.

5 39. At all relevant times herein set forth, California Labor Code section 512(a) provides  
6 that an employer may not require, cause, or permit an employee to work for a period of more than  
7 five (5) hours per day without providing the employee with a meal period of not less than thirty (30)  
8 minutes, except that if the total work period per day of the employee is not more than six (6) hours,  
9 the meal period may be waived by mutual consent of both the employer and the employee.

10 40. During the relevant time period, Plaintiff and members of the Meal Period Class  
11 were required to work for periods longer than five (5) hours without a meal period of not less than  
12 thirty (30) minutes.

13 41. During the relevant time period, Defendant had a practice of failing to provide  
14 Plaintiff and similarly situated employees with timely, 30-minute meal periods before the end of the  
15 fifth hour of work. Additionally, Defendant required Plaintiff and members of the Meal Period Class  
16 to continue to work for uninterrupted periods through meal breaks such that Plaintiff and other  
17 similarly situated employees were not relieved of all duties such and consequently could not take  
18 timely, compliant meal periods.

19 42. Defendant also had a policy and/or practice of not paying meal period premiums  
20 when compliant meal periods were not provided. As a result, Defendant failed to provide Plaintiff  
21 and members of the Meal Period Class all compliant meal periods and failed to pay the full meal  
22 period premiums due in violation of California Labor Code sections 226.7 and 512. Defendant's  
23 conduct violates applicable IWC Wage Order(s), and California Labor Code sections 226.7 and  
24 512(a).

25 43. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section  
26 226.7(b), Plaintiff and Members of the Meal Period Class are entitled to recover from Defendant  
27 one (1) additional hour of pay at the employee's regular hourly rate of compensation for each work  
28 day that the meal period was not provided. As a result of Defendant's unlawful acts, Plaintiff and the

Meal Period Class have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties.

### **THIRD CAUSE OF ACTION**

#### **(VIOLATIONS OF CALIFORNIA LABOR CODE §226.7—REST BREAK VIOLATIONS)**

##### **(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

44. Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out above in paragraphs 1 through 43.

45. Labor Code § 226.7 and Wage Order 4 require that the employer provide rest periods in which the employee is relieved of all duty at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof.

46. Labor Code §§ 226.7, 512, and Wage Order 4 provide that an employee shall receive premium pay of one hour pay for days worked in which they miss a rest period.

47. Plaintiff and the Rest period Class were regularly denied their right to take rest periods in which they were relieved of all duty.

48. Defendant has failed to pay Plaintiff and the Rest period Class premium pay for missed rest periods. Defendant has also wrongly categorized rest breaks as a “company benefit”, thereby misleading employees and avoiding Defendant’s mandatory obligations to provide such rest breaks as required by California law.

49. By the failure to provide rest periods, and the failure to pay premium pay, Defendant violate the provisions of the applicable Wage Orders and Labor Code sections. As a result of Defendant’s unlawful acts, Plaintiff and the Rest period Class have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties.

### **FOURTH CAUSE OF ACTION**

#### **(FAILURE TO PROVIDE WAGE STATEMENTS IN VIOLATION OF CALIFORNIA**

##### **LABOR CODE §226)**

##### **(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

50. Plaintiff incorporates by reference and re-alleges as if fully stated herein the

allegations set out above in paragraphs 1 through 49.

51. Labor Code § 226(a) requires employers, at the time of each payment of wages, to provide each employee with an accurate wage statement itemizing, among other things, the total hours worked by the employee, the applicable hourly rate, the gross and net wages earned by the employee in the pay period, and the name and address of the legal entity that is the employer.

52. Labor Code § 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in subsequent pay periods (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

53. Plaintiff and the OT Class are informed, believe and allege thereon, that since at least four years before the filing of this action, Defendants have knowingly and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Classes in accordance with Labor Code § 226(a).

54. Plaintiff and the OT Class are informed, believe, and allege thereon, that the wage statements Defendants provided to Plaintiff and the Classes do not reflect all hours worked, the applicable wage rates paid, or the identity of all of the legal entities that employ Plaintiff and the Classes.

55. As a result of Defendants' acts and omissions in violation of Labor Code § 226, Defendants are liable to Plaintiff and the Classes for \$50 for each initial pay period when a violation occurred and \$100 for each subsequent violation up to \$4,000, and reasonable attorneys' fees and costs of this suit pursuant to Labor Code § 226(e).

56. Pursuant to Labor Code § 226.3, Defendants are also liable for civil penalties per employee per violation.

#### **FIFTH CAUSE OF ACTION**

#### **(FAILURE TIMELY TO PAY WAGES IN VIOLATION OF CALIFORNIA LABOR**

#### **CODE §204)**

**(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

57. Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out above in paragraphs 1 through 56.

58. California Labor Code §204 in part provides, “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

59. Defendant designated regular paydays and paid Plaintiff bi-weekly.

60. However, as discussed in detail above, Defendant did not pay Plaintiff “all wages earned.” Defendant does not pay Plaintiff and the OT Class the minimum overtime wages due for overtime hours worked. Defendant also does not pay Plaintiff and the Rest Time Class the minimum wage due for rest periods or the §226.7 “additional hour of pay at the employee's regular rate of compensation for each workday that the ... rest... period is not provided” due as a result of Defendant's failure separately to compensate Plaintiff and the Rest Time Class for rest periods. Defendant thus violates §204.

61. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

### **SIXTH CAUSE OF ACTION**

#### **(FAILURE TO KEEP ACCURATE PAYROLL RECORDS)**

#### **(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

62. Plaintiff incorporates by reference and realleges as if fully states herein the allegations set above in paragraphs 1 through 61.

63. In relevant part, Labor Code § 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee in regards to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours. Wage Order 4 § 7 (A); Wage Order 15 § 7 (A).

64. Labor Code § 1174.5 subjects an employer who willfully fails to maintain the accurate and complete records of subdivision (d) of § 1174 to a civil penalty of five hundred dollars



1 (\$500).

2 65. Defendant has violated Labor Code § 1174(d) as well as Wage Order 4, § 7(A) and  
3 Wage Order 15, § 7(A) by willfully failing to keep required payroll records showing the actual hours  
4 worked each day by Plaintiff and the OT Class.

5 66. As a result of Defendant's failure to maintain accurate payroll records, Plaintiff and  
6 the Classes have suffered actual economic harm as they have been precluded from accurately  
7 monitoring their number of hours worked and thus prevented from seeking all wages owed,  
8 including earned overtime pay and accrued vacation pay.

9 67. Plaintiff and the OT Class are entitled to recover a civil penalty of \$500 for each  
10 violation under Labor Code § 1174.5 and request further relief as described below.

### 11 SEVENTH CAUSE OF ACTION

#### 12 (FAILURE TO REIMBURSE FOR REASONABLE BUSINESS EXPENSES)

#### 13 (DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)

14 68. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through  
15 67, as though fully set forth herein.

16 69. California Labor Code §2802(a) provides in pertinent part:

17 An employer shall indemnify his or her employee for all necessary expenditures or  
18 losses incurred by the employee in direct consequence of the discharge of his or her  
19 duties, or of his or her obedience to the directions of the employer, even though  
20 unlawful, unless the employee, at the time of obeying the directions, believed them  
21 to be unlawful.

22 Wage order 4-2001, Section 9(B), provides that "When tools or equipment are required by  
23 the employer or are necessary to the performance of a job, such tools and equipment shall be  
24 provided and maintained by the employer, except that an employee whose wages are at least two (2)  
25 times the minimum wage provided herein may be required to provide and maintain hand tools and  
26 equipment customarily required by the trade or craft."

27 70. During the liability period, Plaintiff and the Deduction/Unreimbursed Class  
28 members incurred necessary expenditures and losses in direct consequence of the discharge of their

1 employment duties and their obedience to the directions of Defendant. Plaintiff and the  
 2 Deduction/Unreimbursed Class members were required by Defendant to pay for and purchase  
 3 certain apparel/shoes which were taken as a deduction from their pay.

4 71. Plaintiff is informed and believes that pursuant to California Labor Code §2802 and  
 5 Wage Order 4-2001, Section 9(B), Plaintiff and the Deduction/Unreimbursed Class members are  
 6 entitled to recover their un-reimbursed expenditures and losses, interest, property, and attorneys'  
 7 fees and costs, in amounts to be proven at time of trial.

8 72. Further, with regard to all un-reimbursed expenditures and losses described herein,  
 9 which are all violations of IWC Wage Order 4-2001, Plaintiff and the Deduction/Unreimbursed  
 10 Class members are entitled to recover penalties of \$50 for the initial violation and \$100 for each  
 11 subsequent violation for every pay period in which Defendant made said illegal deductions from the  
 12 wages of Plaintiff and the class members.

### 13 EIGHTH CAUSE OF ACTION

#### 14 (UNFAIR BUSINESS PRACTICES)

#### 15 **(DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)**

16 73. Plaintiff incorporates by reference and realleges as if fully states herein the allegations  
 17 set above in paragraphs 1 through 72.

18 74. Beginning on a date unknown to Plaintiff, but beginning at least since four years  
 19 before the filing of this action, through Defendants' acts and omissions alleged herein, Defendants  
 20 committed and continue to commit unlawful acts that violated and continue to violate Business and  
 21 Professions Code section 17200.

22 75. Defendants' unlawful acts include violating Labor Code sections as alleged in the  
 23 first through seventh causes of action. Defendant is engaging in unlawful business acts and  
 24 practices by violating California law including, but not limited to, *Labor Code* § 201-203, 204, 226,  
 25 226.7, 227.3, 512, 1174, 1174.5, 1194, 1197, 2802, and 2699 (PAGA) as well as the applicable Wage  
 26 Order.

27 76. Defendant's violation of these statutes and regulations independently and separately  
 28 constitute an unlawful business practice within the meaning of Business and Professions Code §

1 17200.

2 77. As a result of the aforementioned acts, Plaintiff and the Classes described in  
3 Paragraph 19 above have lost and continue to lose money and/or property and suffered and  
4 continue to suffer injury in fact. Defendants continue to hold unpaid wages legally belonging to  
5 Plaintiff and the Classes.

6 78. Plaintiff and each of the Classes are entitled to restitution in the amounts unlawfully  
7 withheld by Defendants, with interest, injunctive relief, as well as an award of attorneys' fees and  
8 costs. See Cortez v. Purolator Air Filtration Products Co. (2000) 23 Cal.4th 163, 173 ("Unlawfully  
9 withheld wages may be recovered as restitution in a UCL action.").

10 79. Accordingly, Plaintiff respectfully request that the Court award judgment and relief  
11 in their favor as described herein.

## 12 NINTH CAUSE OF ACTION

### 13 (FAILURE TO COMPLY WITH PRIVATE ATTORNEYS GENERAL ACT)

#### 14 (DEFENDANT FIVE STAR QUALITY CARE and DOES 1-25)

15 80. Plaintiff incorporates by reference and realleges as if fully stated herein the  
16 allegations set above in paragraphs 1 through 79.

17 81. On a representative and/or a class action basis, Plaintiff seeks recovery of penalties  
18 under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq.

19 82. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself  
20 and other current or former employees against an employer for violations of Labor Code provisions  
21 alleged herein, including Labor Code §§ 201-204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1174.5,  
22 1194, 1197, 1198, and 2802.

23 83. PAGA further provides for enforcement of the penalty provisions of Labor Code §  
24 558. Section 558 authorizes recovery of civil penalties against the employer and persons who acted  
25 on behalf of the employer or who have caused the employer to violate § 510, § 512, and/or any  
26 provision regulating hours and days of work in any Wage Order.

27 84. Plaintiff is an aggrieved employee because she was employed by the alleged violator  
28 and the alleged violations were committed against her.

85. Plaintiff complied with the PAGA notice provision set forth in Labor Code § 2699.3(a)(1), by providing a certified letter to the Labor Workforce Development Agency and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations and has waited the applicable exhaustion period prior to filing this lawsuit. Therefore, the Plaintiff is entitled to prosecute their Private Attorney General Act ("PAGA") claims under Cal. Labor Code §2699 et seq.

86. Plaintiff requests civil penalties against Defendants for their violations of the Labor Code, as provided under Labor Code §226.3, § 558, §1174.5, and § 2699(f), as well as for return and reimbursement of money and property pursuant to Labor Code §2802, plus attorneys' fees and costs, in amounts to be proved at trial.

#### PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgement on behalf of herself, others similarly situated, and the State as follows:

#### ON THE FIRST CAUSE OF ACTION

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and others similarly situated;

2. For general unpaid wages at required overtime wage rates and such general and special damages as may be appropriate;

3. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

5. For such other and further relief as the Court may deem equitable and appropriate;

#### ON THE SECOND CAUSE OF ACTION

6. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 226.7 and 512(a) and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and others similarly situated;

7. That the Court make an award to the Plaintiff and others similarly situated of one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided;

8. For all actual, consequential, and incidental losses and damages, according to proof;

9. For premiums pursuant to California Labor Code section 226.7(b);

10. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due; and

11. For such other and further relief as the Court may deem equitable and appropriate.

### ON THE THIRD CAUSE OF ACTION

12. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 226.7 and 512(a) and applicable IWC Wage Order(s) by willfully failing to provide all rest periods to Plaintiff and others similarly situated;

13. That the Court make an award to the Plaintiff and others similarly situated of one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided;

14. For all actual, consequential, and incidental losses and damages, according to proof;

15. For premiums pursuant to California Labor Code section 226.7(b);

16. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due; and

17. For such other and further relief as the Court may deem equitable and appropriate.

### ON THE FOURTH CAUSE OF ACTION

18. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and others similarly situated, and willfully failed to provide accurate itemized wage statements thereto;

19. For all actual, consequential and incidental losses and damages, according to proof;

20. For injunctive relief pursuant to California Labor Code section 226(h);

21. For statutory penalties pursuant to California Labor Code section 226(e); and

1           22.     For such other and further relief as the Court may deem equitable and appropriate;

2                                   **ON THE FIFTH CAUSE OF ACTION**

3           23.     That the Court declare, adjudge and decree that Defendant violated California Labor  
4 Code section 204 by willfully failing to pay overtime wages, minimum wages, and meal and rest  
5 period premiums owed to Plaintiff to others similarly situated during his employment;

6           24.     For all actual, consequential and incidental losses and damages, according to proof;

7           25.     For statutory penalties pursuant to California Labor Code § 204 for Plaintiff and  
8 others similarly situated;

9           26.     For pre-judgment interest on any unpaid wages from the date such amounts were  
10 due; and

11          27.     For such other and further relief as the Court may deem equitable and appropriate.

12                                   **ON THE SIXTH CAUSE OF ACTION**

13          28.     That the Court declare, adjudge and decree that Defendant violated California Labor  
14 Code section 1174 by willfully failing to provide accurate payroll records;

15          29.     For all actual, consequential and incidental losses and damages, according to proof;

16          30.     For statutory penalties pursuant to California Labor Code § 1174.5 for Plaintiff and  
17 others similarly situated;

18          31.     For pre-judgment interest on any unpaid wages from the date such amounts were  
19 due; and

20          32.     For such other and further relief as the Court may deem equitable and appropriate.

21                                   **ON THE SEVENTH CAUSE OF ACTION**

22          33.     For special, consequential and double damages in an amount according to proof at  
23 time of trial;

24          34.     For general damages in an amount according to proof at time of trial;

25          35.     For exemplary and/or punitive damages, as against Defendants, in an amount to be  
26 determined according to proof at time of trial; and

27          36.     For reasonable attorneys fees and costs;

28          37.     For such other and further relief as the Court may deem equitable and appropriate;

**ON THE EIGHTH CAUSE OF ACTION**

38. That Defendant be found to have engaged in unlawful business practices and unfair competition in violation of §§17200, et seq. of the California Business & Professions Code; and

39. That Defendant be ordered and enjoined to make restitution to Plaintiff and others similarly situated due to their unfair business practices, including disgorgement of wrongfully withheld wages, improper deductions and charges, and unreimbursed expenses pursuant to California Business & Professions Code §§17203 and 17204; and

40. That Defendant be enjoined from continuing the illegal course of conduct alleged herein.

41. For such other and further relief as the Court may deem equitable and appropriate.

**ON THE NINTH CAUSE OF ACTION**

42. For penalties and other relief pursuant to *Labor Code* § 2699 for Plaintiff and all aggrieved employees;

43. That Defendant be enjoined from continuing the illegal course of conduct alleged herein;

44. For private attorney general enforcement through the courts on behalf of the state of California;

45. For such other and further relief as the Court may deem equitable and appropriate.

**ON ALL CAUSES OF ACTION**

46. For costs of suit incurred herein;

47. For prejudgment interest as provided by law; and

48. For such other and further relief as the Court deems just and proper.

DATED: May \_\_\_\_, 2015

SCHIMMEL & PARKS  
*A Professional Law Corporation*

\_\_\_\_\_  
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all similarly situated and aggrieved employees

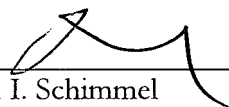


DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of the causes of action and claims asserted herein.

DATED: May \_\_\_\_, 2015

SCHIMMEL & PARKS  
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\_\_\_\_\_  
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